

ASSEMBLY BILL

No. 327

Introduced by Assembly Member Gallegos

February 11, 1999

An act to amend Sections 3071 and 3072 of the Civil Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 327, as introduced, Gallegos. Vehicles: license plates: lien sales.

Existing law provides procedures for the sale of a vehicle at a lien sale and makes that sale void unless the lienholder complies with those procedures and other provisions relating to liens.

This bill would require that, prior to offering the vehicle for sale at a lien sale, the lienholder remove and destroy the vehicle's license plates and include in the lien sale packet given to the buyer a signed document certifying that the license plates have been destroyed. The bill would require the lienholder to maintain for 2 years an accurate record of every license plate the lienholder destroys under this requirement. The specified record would be required to remain open for inspection by any peace officer during regular business hours of operation.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3071 of the Civil Code is
2 amended to read:

3 3071. (a) A lienholder shall apply to the department
4 for the issuance of an authorization to conduct a lien sale
5 pursuant to this section for any vehicle with a value
6 determined to be over four thousand dollars (\$4,000). A
7 filing fee shall be charged by the department and may be
8 recovered by the lienholder if a lien sale is conducted or
9 if the vehicle is redeemed. The application shall be
10 executed under penalty of perjury and shall include all of
11 the following information:

12 (1) A description of the vehicle, including make, year
13 model, identification number, license number, and state
14 of registration. For motorcycles, the engine number also
15 shall be included. If the vehicle identification number is
16 not available, the department shall request an inspection
17 of the vehicle by a peace officer, licensed vehicle verifier,
18 or departmental employee before accepting the
19 application.

20 (2) The names and addresses of the registered and
21 legal owners of the vehicle, if ascertainable from the
22 registration certificates within the vehicle, and the name
23 and address of any person whom the lienholder knows, or
24 reasonably should know, claims an interest in the vehicle.

25 (3) A statement of the amount of the lien and the facts
26 that give rise to the lien.

27 (b) Upon receipt of an application made pursuant to
28 subdivision (a), the department shall do all of the
29 following:

30 (1) Notify the vehicle registry agency of a foreign state
31 of the pending lien sale, if the vehicle bears indicia of
32 registration in that state.

33 (2) By certified mail, send a notice, a copy of the
34 application, and a return envelope preaddressed to the
35 department to the registered and legal owners at their
36 addresses of record with the department, and to any
37 other person whose name and address is listed in the
38 application.

(c) The notice required pursuant to subdivision (b) shall include all of the following statements and information:

(1) An application has been made with the department for authorization to conduct a lien sale.

(2) The person has a right to a hearing in court.

(3) If a hearing in court is desired, a Declaration of Opposition form, signed under penalty of perjury, shall be signed and returned to the department within 10 days of the date that the notice required pursuant to subdivision (b) was mailed.

(4) If the Declaration of Opposition form is signed and returned to the department, the lienholder shall be allowed to sell the vehicle only if he or she obtains a court judgment, if he or she obtains a subsequent release from the declarant or if the declarant, cannot be served as described in subdivision (e).

(5) If a court action is filed, the declarant shall be notified of the lawsuit at the address shown on the Declaration of Opposition form and may appear to contest the claim.

(6) The person may be liable for court costs if a judgment is entered in favor of the lienholder.

(d) If the department receives the Declaration of Opposition form in the time specified, the department shall notify the lienholder within 16 days of the receipt of the form that a lien sale shall not be conducted unless the lienholder files an action in court within 30 days of the department's notice under this subdivision. A lien sale of the vehicle shall not be conducted unless judgment is subsequently entered in favor of the lienholder or the declarant subsequently releases his or her interest in the vehicle. If a money judgment is entered in favor of the lienholder and the judgment is not paid within five days after becoming final, then the judgment may be enforced by lien sale proceedings conducted pursuant to subdivision (f).

(e) Service on the declarant in person or by certified mail with return receipt requested, signed by the declarant or an authorized agent of the declarant at the

1 address shown on the Declaration of Opposition form,
2 shall be effective for the serving of process. If the
3 lienholder has served the declarant by certified mail at
4 the address shown on the Declaration of Opposition form
5 and the mail has been returned unclaimed, or if the
6 lienholder has attempted to effect service on the
7 declarant in person with a marshal, sheriff, or licensed
8 process server and the marshal, sheriff, or licensed
9 process server has been unable to effect service on the
10 declarant, the lienholder may proceed with the judicial
11 proceeding or proceed with the lien sale without a
12 judicial proceeding. The lienholder shall notify the
13 department of the inability to effect service on the
14 declarant and shall provide the department with a copy
15 of the documents with which service on the declarant was
16 attempted. Upon receipt of the notification of
17 unsuccessful service, the department shall send
18 authorization of the sale to the lienholder and send
19 notification of the authorization to the declarant.

20 (f) Upon receipt of authorization to conduct the lien
21 sale from the department, the lienholder shall
22 immediately do all of the following:

23 (1) At least five days, but not more than 20 days, prior
24 to the lien sale, not counting the day of the sale, give
25 notice of the sale by advertising once in a newspaper of
26 general circulation published in the county in which the
27 vehicle is located. If there is no newspaper published in
28 the county, notice shall be given by posting a Notice of
29 Sale form in three of the most public places in the town
30 in which the vehicle is located and at the place where the
31 vehicle is to be sold for 10 consecutive days prior to and
32 including the day of the sale.

33 (2) Send a Notice of Pending Lien Sale form 20 days
34 prior to the sale but not counting the day of sale, by
35 certified mail with return receipt requested, to each of
36 the following:

37 (A) The registered and legal owners of the vehicle, if
38 registered in this state.

39 (B) All persons known to have an interest in the
40 vehicle.

1 (C) The department.

2 (g) All notices required by this section, including the
3 notice forms prescribed by the department, shall specify
4 the make, year model, vehicle identification number,
5 license number, and state of registration, if available, and
6 the specific date, exact time, and place of sale. For
7 motorcycles, the engine number shall also be included.

8 (h) *(1) Prior to offering the vehicle for sale, the*
9 *lienholder shall do both of the following:*

10 *(A) Remove and destroy the vehicle's license plates.*

11 *(B) Include in the lien sale packet given to the buyer*
12 *a signed document certifying that the license plates have*
13 *been destroyed.*

14 *(2) The lienholder shall maintain for two years an*
15 *accurate record of every license plate the lienholder*
16 *destroys under this subdivision.*

17 *(3) The record required to be maintained under*
18 *paragraph (2) remain open for inspection by any peace*
19 *officer during regular business hours of operation.*

20 *(i) No lien sale shall be undertaken pursuant to this*
21 *section unless the vehicle has been available for*
22 *inspection at a location easily accessible to the public for*
23 *at least one hour before the sale and is at the place of sale*
24 *at the time and date specified on the notice of sale. Sealed*
25 *bids shall not be accepted. The lienholder shall conduct*
26 *the sale in a commercially reasonable manner.*

27 ~~*(i)*~~

28 *(j) Within 10 days after the sale of any vehicle pursuant*
29 *to this section, the legal or registered owner may redeem*
30 *the vehicle upon the payment of the amount of the sale,*
31 *all costs and expenses of the sale, together with interest*
32 *on the sum at the rate of 12 percent per annum from the*
33 *due date thereof or the date when that sum was advanced*
34 *until the repayment. If the vehicle is not redeemed, all*
35 *lien sale documents required by the department shall*
36 *then be completed and delivered to the buyer.*

37 ~~*(j)*~~

38 *(k) Any lien sale pursuant to this section shall be void*
39 *if the lienholder does not comply with this chapter. Any*
40 *lien for fees or storage charges for parking and storage of*

1 a motor vehicle shall be subject to Section 10652.5 of the
2 Vehicle Code.

3 SEC. 2. Section 3072 of the Civil Code is amended to
4 read:

5 3072. (a) For vehicles with a value determined to be
6 four thousand dollars (\$4,000) or less, the lienholder shall
7 apply to the department for the names and addresses of
8 the registered and legal owners of record. The request
9 shall include a description of the vehicle, including make,
10 year, model, identification number, license number, and
11 state of registration. If the vehicle identification number
12 is not available, the Department of Motor Vehicles shall
13 request an inspection of the vehicle by a peace officer,
14 licensed vehicle verifier, or departmental employee
15 before releasing the names and addresses of the
16 registered and legal owners and interested parties.

17 (b) The lienholder shall, immediately upon receipt of
18 the names and addresses, send, by certified mail with
19 return receipt requested or by United States Postal
20 Service Certificate of Mailing, a completed Notice of
21 Pending Lien Sale form, a blank Declaration of
22 Opposition form, and a return envelope preaddressed to
23 the department, to the registered owner and legal owner
24 at their addresses of record with the department, and to
25 any other person known to have an interest in the vehicle.
26 The lienholder shall additionally send a copy of the
27 completed Notice of Pending Lien Sale form to the
28 department by certified mail on the same day that the
29 other notices are mailed pursuant to this subdivision.

30 (c) All notices to persons having an interest in the
31 vehicle shall be signed under penalty of perjury and shall
32 include all of the following information and statements:

33 (1) A description of the vehicle, including make, year
34 model, identification number, license number, and state
35 of registration. For motorcycles, the engine number shall
36 also be included.

37 (2) The specific date, exact time, and place of sale,
38 which shall be set not less than 31 days, but not more than
39 41 days, from the date of mailing.



1 (3) The names and addresses of the registered and
2 legal owners of the vehicle and any other person known
3 to have an interest in the vehicle.

4 (4) All of the following statements:

5 (A) The amount of the lien and the facts concerning
6 the claim which gives rise to the lien.

7 (B) The person has a right to a hearing in court.

8 (C) If a court hearing is desired, a Declaration of
9 Opposition form, signed under penalty of perjury, shall
10 be signed and returned to the department within 10 days
11 of the date the Notice of Pending Lien Sale form was
12 mailed.

13 (D) If the Declaration of Opposition form is signed
14 and returned, the lienholder shall be allowed to sell the
15 vehicle only if he or she obtains a court judgment or if he
16 or she obtains a subsequent release from the declarant or
17 if the declarant cannot be served as described in
18 subdivision (e).

19 (E) If a court action is filed, the declarant shall be
20 notified of the lawsuit at the address shown on the
21 Declaration of Opposition form and may appear to
22 contest the claim.

23 (F) The person may be liable for court costs if a
24 judgment is entered in favor of the lienholder.

25 (d) If the department receives the completed
26 Declaration of Opposition form within the time specified,
27 the department shall notify the lienholder within 16 days
28 that a lien sale shall not be conducted unless the
29 lienholder files an action in court within 30 days of the
30 notice and judgment is subsequently entered in favor of
31 the lienholder or the declarant subsequently releases his
32 or her interest in the vehicle. If a money judgment is
33 entered in favor of the lienholder and the judgment is not
34 paid within five days after becoming final, then the
35 judgment may be enforced by lien sale proceedings
36 conducted pursuant to subdivision (f).

37 (e) Service on the declarant in person or by certified
38 mail with return receipt requested, signed by the
39 declarant or an authorized agent of the declarant at the
40 address shown on the Declaration of Opposition form,

1 shall be effective for the serving of process. If the
2 lienholder has served the declarant by certified mail at
3 the address shown on the Declaration of Opposition form
4 and the mail has been returned unclaimed, or if the
5 lienholder has attempted to effect service on the
6 declarant in person with a marshal, sheriff, or licensed
7 process server and the marshal, sheriff, or licensed
8 process server has been unable to effect service on the
9 declarant, the lienholder may proceed with the judicial
10 proceeding or proceed with the lien sale without a
11 judicial proceeding. The lienholder shall notify the
12 Department of Motor Vehicles of the inability to effect
13 service on the declarant and shall provide the
14 Department of Motor Vehicles with a copy of the
15 documents with which service on the declarant was
16 attempted. Upon receipt of the notification of
17 unsuccessful service, the Department of Motor Vehicles
18 shall send authorization of the sale to the lienholder and
19 shall send notification of the authorization to the
20 declarant.

21 (f) At least 10 consecutive days prior to and including
22 the day of the sale, the lienholder shall post a Notice of
23 Pending Lien Sale form in a conspicuous place on the
24 premises of the business office of the lienholder and if the
25 pending lien sale is scheduled to occur at a place other
26 than the premises of the business office of the lienholder,
27 at the site of the forthcoming sale. The Notice of Pending
28 Lien Sale form shall state the specific date and exact time
29 of the sale and description of the vehicle, including the
30 make, year model, identification number, license
31 number, and state of registration. For motorcycles, the
32 engine number shall also be included. The notice of sale
33 shall remain posted until the sale is completed.

34 (g) *(1) Prior to offering the vehicle for sale, the*
35 *lienholder shall do both of the following:*

36 *(A) Remove and destroy the vehicle's license plates.*

37 *(B) Include in the lien sale packet given to the buyer*
38 *a signed document certifying that the license plates have*
39 *been destroyed.*

1 (2) *The lienholder shall maintain for two years an*
2 *accurate record of every license plate the lienholder*
3 *destroys under this subdivision.*

4 (3) *The record required to be maintained under*
5 *paragraph (2) remain open for inspection by any peace*
6 *officer during regular business hours of operation.*

7 (h) No lien sale shall be undertaken pursuant to this
8 section unless the vehicle has been available for
9 inspection at a location easily accessible to the public at
10 least one hour before the sale and is at the place of sale at
11 the time and date specified on the notice of sale. Sealed
12 bids shall not be accepted. The lienholder shall conduct
13 the sale in a commercially reasonable manner. All lien
14 sale documents required by the department shall be
15 completed and delivered to the buyer immediately
16 following the sale.

17 ~~(h)~~—

18 (i) Any lien sale pursuant to this section shall be void
19 if the lienholder does not comply with this chapter. Any
20 lien for fees or storage charges for parking and storage of
21 a motor vehicle shall be subject to Section 10652.2 of the
22 Vehicle Code.

